Case Summary

Two complaints against Housing Department respectively for -
(a) delay in resolving a case of seepage on the ceiling; and
(b) unfair treatment to the tenant whose unit was alleged to have caused the seepage

Foreword

Seepage is common problem in residential units. It is not easy to resolve because -

(1) it is difficult to identify the source of seepage;

(2) repair is technically not easy;

(3) the households concerned may be unwilling to cooperate;

(4) enforcement departments must action positively;

(5) decision-making bodies must support the executive department.

The case in question highlights these key issues and offers reference for all concerned.

The Complaints

2. Two public housing tenants lodged their complaints with this Office against Housing Department ("HD") for mishandling the same case of seepage:

(a) **the tenant downstairs** was dissatisfied that HD had shirked its responsibility on the excuse that the tenant upstairs was uncooperative, and allowed the seepage to persist as a nuisance to her for years; and

(b) **the tenant upstairs** complained against HD for pestering her over the persistent seepage problem downstairs and trying to evict her through the Marking Scheme for Tenancy Enforcement (“Marking Scheme”).

Sequence of Events

3. The tenant downstairs first reported to HD on her ceiling seepage in July 1996 and then in September 1999 again. Although HD had since carried out repairs many times in the unit, the problem persisted. HD staff thus considered that the seepage probably originated from the unit upstairs.

4 To arrange inspection and repairs in the unit upstairs, HD time and again telephoned and wrote to the tenant upstairs, sending staff to visit the unit but all in vain.

5. The tenant upstairs evaded contact with HD staff and refused to cooperate. She claimed that she had previously let HD carry out repairs in her unit, as a result of which her bathtub was damaged, and so she had little confidence in HD works. Moreover, because of her chronic illness and a busy job, she could not allow HD staff to enter her premises again.

6. Clause II (23) of the Tenancy Agreement states that a tenant shall “permit the Landlord and his agents and all persons authorized by him at all reasonable times to enter and view the said flat and to take an inventory of the fixtures and fittings therein and to do any repairs or work for which the Landlord is liable”. HD, as the execution arm of the Landlord, persuaded and warmed the tenant upstairs many times with reference to this clause, but all to no avail.

7. On 1 August 2003, HD implemented the Marking Scheme whereby tenants who “deny HD staff or staff representing the HD entry for repairs responsible by the HD” shall be allotted 7 points as warning. HD invoked this rule and urged the tenant upstairs to cooperate. However, as she repeatedly ignored HD’s warning letters, the Department allotted her a total of 14 points. Under the Marking Scheme, a tenancy will be liable to termination with 16 points.

8. To date, the seepage problem has remained unresolved.

Our Comments

Complaint by the Tenant Downstairs

9. During the four years between September 1999 (when the tenant downstairs complained to HD for the second time) and August 2003 (when the Marking Scheme was introduced), HD issued a total of 61 letters to the tenant upstairs, including eight warning letters. However, they were repetitive in contents, reiterating only the terms of tenancy without indicating any substantive action to be taken. They had no effect on the tenant upstairs.

10. HD had failed to exercise its authority under the Tenancy Agreement to secure cooperation from the tenant upstairs. On the contrary, it had tolerated her uncooperative attitude, accepted her continuing delay and did not actively consider issuing her with a Notice to Quit in accordance with the terms of tenancy. As a result, the tenant downstairs had to suffer the nuisance from the seepage year after year.

11. Against this background, The Ombudsman considered the complaint by the tenant downstairs **substantiated**.

Complaint by the Tenant Upstairs

12. The tenant upstairs claimed that she had "many times" allowed HD technicians to carry out works in her unit. However, this Office noted that in fact HD had only carried out a seepage test in her unit and repaired the drain outlet of her toilet in late 1999. Whilst HD had subsequently tried to seek her cooperation time and again, she flatly refused to allow HD staff entry into her unit.

13. The tenant upstairs had evaded contact with HD staff. Occasionally, she would just reiterate her position by telephone calls or letters, repeatedly using various excuses to refuse HD staff entry to carry out inspection or repair works. It was obvious the tenant upstairs had no intention whatsoever to cooperate. Her behaviour showed that she had no sense of social responsibility and no feeling for other people's sufferings.

14. Her excuses included HD's refusal to take responsibility for the damage to her property by its previous repair works and her poor health. In fact, HD was willing to repair any such damage for her. However, she refused to produce a medical certificate for her health condition and to arrange temporary or permanent transfer for her so that the works to be done would

not affect her health. This Office, therefore, considered that the tenant upstairs had no grounds to deny HD staff entry.

15. Clearly, the tenant upstairs had not cooperated with HD in compliance with Clause II (23) of the Tenancy Agreement. Upon the implementation of the Marking Scheme, the Department accordingly allotted points to her household as warning. Inconsiderate and unrepentant even in the face of penalty, the tenant upstairs, in our view, had only herself to blame for the points allotted.

16. In sum, it was essentially the uncooperative behaviour of the tenant upstairs that caused the tenant downstairs prolonged suffering from the seepage nuisance. HD's indecisiveness was clearly improper and inexcusable; but in order for an executive department's actions to be effective, they need cooperation from the parties concerned and support from decision-making bodies. The disregard of the tenant upstairs for HD's warnings and her unfounded complaint against the Department constituted a major obstacle to the Department's execution of duty.

17. In these circumstances, The Ombudsman concluded that the complaint by the tenant upstairs was **unsubstantiated**.

Recommendations

18. This Office recommended that HD -

(i) send a written apology to the tenant downstairs;

(ii) take decisive actions to solve the problem effectively if the tenant upstairs continues to be uncooperative. Such actions may include strict enforcement of the Marking Scheme or invoking the Tenancy Agreement to terminate her tenancy; and

(iii) arrange expeditiously for the tenant downstairs to transfer if she can tolerate the seepage no more and agrees to move.

19. The Ombudsman takes this opportunity to urge residents to observe neighbourliness and civic-mindedness.

Response from HD

20. HD accepted our findings and recommendations.

Office of The Ombudsman
March 2004